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TRANSPORTATION, INC.

THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN FERRER, an individual

Plaintiff,

v.

ALSTOM TRANSPORTATION, INC.;
and DOES 1-20, inclusive,

Defendants.

Case No. 3:23-cv-06656-AGT

**JOINT CASE MANAGEMENT STATEMENT
UNDER FED. R. CIV. PROC. 26(F)**

[Originally San Mateo County Superior Court
Action No. 23-CIV-05632]

State Action filed: November 27, 2023

Removal Date: December 28, 2023

Trial Date: August 18, 2025

TO ALL PARTIES AND THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE: Plaintiff, KEVIN FERRER (“Plaintiff”) and Defendant,
ALSTOM TRANSPORTATION, INC. (“Defendant”) (collectively, the “Parties”), by and

1 through their counsel of record, have met and conferred on the topics required by Federal Rule of
2 Civil Procedure (“FRCP”) 26(f) and Local Civil Rule 16-9 and hereby submit the following Joint
3 Case Management Statement.

4 **I. JURISDICTION AND SERVICE**

5 The Court has original diversity jurisdiction pursuant to 28 U.S.C. 1332 as the matter
6 involves a dispute allegedly in excess of \$75,000 between Parties with different state citizenships.

7 **II. FACTS**

8 **A. Plaintiff’s Position**

9 On June 6, 2022, Alstom Transportation, Inc. hired Plaintiff as a Maintenance Supervisor.
10 As a Maintenance Supervisor, Plaintiff’s duties required supervising maintenance/central control
11 personnel for the passenger air trains that Alstom operated and maintained at SFO (San Francisco
12 International) airport. His duties included reviewing train recoveries/incidents while conducting
13 tabletop exercises, reviewing work orders for accurate information, payroll & employee attendance
14 review and enforcements if necessary, setting shift expectations, performing safety walkthroughs
15 throughout the APM system, maintaining on-call availability, updating and creating internal
16 documents relating to maintenance and central control operations. Plaintiff successfully performed
17 the essential functions of the Maintenance Supervisor.

18 Plaintiff Kevin Ferrer (“Plaintiff” or “Ferrer”) was a disabled person within the meaning of
19 FEHA. He was diagnosed with disabilities which are codified and identified as disabilities under
20 FEHA. These disabilities also triggered severe asthma attacks. This was confirmed by both
21 Concentra, the medical provider that Alstom sent Plaintiff too after he filed his workers
22 compensation claim and Plaintiff’s Kaiser medical professionals. However, neither of these two
23 indications were sufficient for Defendant to provide Ferrer with his requested reasonable
24 accommodation: a finite, month-long, medical leave of absence.

25 Nurse Practitioner, Benjamin Quintos (“Quintos”) completed Alstom’s unlawful ADA form
26 which called for him to identify Plaintiff’s diagnosis. His notes clearly and unequivocally
27 demonstrated that Plaintiff suffered from a chronic health condition that affected major life
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1 activities such as **working and breathing**. Instead of accepting the completed form, Alstom
2 demanded that Quintos answer an additional, specific question that was not on the original unlawful
3 ADA form. After Quintos had fully completed their ADA form, Jessica Ibazeta, Alstom's Human
4 Resources Business Partner ("Ibazeta") demanded that Quintos and/or Kaiser answer this question:
5 "How a one month leave will enable Kevin Ferrer to perform the essential functions of his job?"
6 Its demand for an almost immediate response to this question is not supported by the FEHA or any
7 applicable case law.

8 Alstom created a moving target for Ferrer because it believed he fabricated his disabilities
9 to take time off for the recent death of a child family member in the Philippines. Quintos' completed
10 ADA form and medical note indicating he needed time off from work should have put Alstom on
11 notice that Plaintiff was disabled within the meaning of FEHA. Instead, Alstom's counsel contends
12 that Plaintiff's health conditions are "alleged disabilities."

13 In March and April 2023, Alstom, by and through its managing agents Ibazeta, Alfredo
14 Hinojosa ("Hinojosa") the Site Director, and Keith Goldsborough ("Goldsborough"), the
15 Operations & Maintenance Manager, repeatedly stated it could not confirm he had a qualifying
16 disability and refused to accept the doctor's note from Kaiser indicating that Plaintiff required a
17 medical leave through April 21, 2023. In early April, Ferrer informed Goldsborough via text
18 message that he would call in sick once every 7 days, as Goldsborough requested. Goldsborough
19 did not respond to him or inform him that this would be insufficient. Just five days later, on April
20 10, 2023, Ibazeta terminated Plaintiff's employment via email. Ibazeta claimed that his
21 employment was terminated due to insubordination. However, it is abundantly clear that Alstom
22 terminated Plaintiff because of his disability and requests for reasonable accommodations.
23 Defendant has not produced any evidence demonstrating that it would have been an undue hardship
24 for it to provide Plaintiff with the month-long medical leave of absence his medical professionals
25 recommended, and that Concentra also recommended.

26 We anticipate Alstom will argue that Ferrer was unable to perform the essential functions
27 of his job because of his diagnoses. However, what happened here is a prime example of why
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1 California enacted FEHA, which provides greater protection to disabled employees than the ADA.
 2 Importantly, FEHA does not require employees to disclose their actual medical conditions to
 3 employers. One of the obvious reasons that FEHA codified this protection was to prevent HR
 4 personnel and supervisors from making medical determinations about an employee's ability to
 5 perform his essential job functions.

6 That decision is best left to trained medical professionals—not HR employees. HR
 7 personnel should not make decisions as to whether an employee is able to perform his job duties
 8 based solely on their own personal understandings and biases about an employee's medical
 9 conditions. This is precisely what happened here. Three of Defendant's management level
 10 employees should not have bullied their way to learning Plaintiff's private and protected mental
 11 health diagnoses.

12 Employers in California with access to the internet have access to free resources¹ which
 13 indicate what they can (and more importantly, what they *cannot*) ask their employees who request
 14 reasonable accommodations. The website even provides a sample form for employers' use. Further
 15 demonstrating their lack of compliance with California law—whether by ignorance or intentional
 16 disregard—Alstom also required Plaintiff to sign an unlawful non-compete clause which violates
 17 Labor Code Section 432.5. Nor did Alstom comply with AB 1076, which required California
 18 employers to inform all employees who executed unlawful clauses that they were indeed unlawful
 19 and unenforceable on or before February 17, 2024.

20 **B. Defendant's Position**

21 Alstom Transportation, Inc. (Defendant) is incorrectly identified in the Complaint as
 22 Plaintiff's employer at the San Francisco Airport. At all times relevant to this action, Plaintiff was
 23 an employee of Alstom Transport USA Inc., an affiliate of Defendant Alstom Transportation, Inc.²
 24

25 ¹ <https://calcivilrights.ca.gov/accommodation/>

26 ² For the convenience of the parties and the Court, and to preserve judicial resources, Defendant
 27 will consent to the substitution of Alstom Transport USA Inc. as the proper defendant for this
 28 action, and will work with Plaintiff to accomplish that. For purposes of this Report, Defendant
 Alstom Transportation, Inc. will respond as such, but where pertinent, will refer to the employing
 entity (Alstom Transport USA Inc.) as "Alstom."

1 Alstom denies that Plaintiff was terminated due to his engagement in various protected
2 activities as alleged in the Complaint. Rather, Plaintiff requested vacation time off to go to the
3 Philippines in April 2023, which was approved by Alstom. In the interim, Plaintiff exhausted his
4 paid time off and, as a result, Alstom requested that Plaintiff adjust his upcoming vacation time off.
5 Plaintiff then requested bereavement leave to go to the Philippines nonetheless to pay respects to
6 his cousin. Alstom denied this request because cousins are outside the scope of Alstom's
7 bereavement policy. Upon this denial, Plaintiff requested a multi-week leave of absence as an
8 accommodation for work-related stress (covering the requested vacation time).

9 On March 17, 2023, Alstom provided Plaintiff with Alstom's ADA accommodation request
10 questionnaire for his healthcare provider, which Plaintiff returned the same day signed by a nurse
11 practitioner. However, the responses, without reason, concluded that Plaintiff needed time off to
12 utilize an Employee Assistance Program (EAP). At a minimum, the responses failed to explain how
13 several weeks off would change Plaintiff's alleged condition. Alstom attempted to better
14 understand Plaintiff's situation and approved unpaid leave on March 28, 2023 and Alstom also
15 offered a thirty-day flexible work schedule to participate in EAP and provide additional information
16 to assist Alstom in determining whether Plaintiff was disabled, and if so, whether there was an
17 available accommodation that would enable Plaintiff to perform the essential functions of his job
18 without undue burden on Alstom and its operations. Additionally, Alstom attempted to obtain more
19 information from Plaintiff's healthcare provider, but was unsuccessful.

20 Plaintiff was unwilling to provide the information that Alstom requested. Alstom eventually
21 terminated Plaintiff on April 10, 2023 due to his deliberate refusal to report for work on scheduled
22 work days or to cooperate with Alstom to determine if Plaintiff had a lawful basis for failing to do
23 so.

24 **III. LEGAL ISSUES**

25 **A. Plaintiff's Position**

26 Plaintiff anticipates the following legal issues:
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- 1 • Whether Defendant's FMLA form asking Plaintiff's medical professional to identify
- 2 his diagnoses violated California Law.
- 3 • Whether Defendant and its management staff violated Plaintiff's rights to privacy
- 4 relating to his private medical information.
- 5 • Whether sending one fax and one phone call to Kaiser meets an employer's obligations
- 6 under FEHA.
- 7 • Whether Defendant's had an obligation to provide Plaintiff's requested reasonable
- 8 accommodations once Defendant received notice that Plaintiff's disabilities affected
- 9 his ability to perform major life activities.
- 10 • Whether Defendant had the ability to give Plaintiff an ultimatum to accept certain
- 11 accommodations it offered arbitrarily.
- 12 • Once Defendant was aware Plaintiff was disabled within the meaning of FEHA,
- 13 Defendant's obligations to provide his requested reasonable accommodations when
- 14 they did not cause an undue hardship for Alstom.
- 15 • Alstom's decision not to continue to the interactive process with Plaintiff's medical
- 16 professionals after it would not respond to its inquiry: "How a one month leave will
- 17 enable Kevin Ferrer to perform the essential functions of his job?" and its motivations
- 18 for doing so.
- 19 • Whether an employer can condition providing an employee's reasonable
- 20 accommodations to employees based on their medical professional's less than two
- 21 week delay in responding to an inquiry such as: "How a one month leave will enable
- 22 Kevin Ferrer [the employee] to perform the essential functions of his job?"
- 23 • When and why Defendant requires some employees to inquire with their medical
- 24 professionals to obtain a response to this inquiry: "How a one month leave will enable
- 25 Kevin Ferrer [the employee] to perform the essential functions of his job?"
- 26 • How Defendant's Leave policies apply to its workforce in practice.
- 27
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- The training provided to Alstom’s managerial employees concerning FEHA and engagement in the interactive process.
- The internal procedures that Alstom engaged in once it was on notice of Plaintiff’s requests for reasonable accommodations.
- Whether Alstom failed to prevent disability discrimination in its workplace.

B. Defendant’s Position

Alstom’s defenses include that all actions taken and made by Alstom with respect to Plaintiff were taken for legitimate business reasons and not on account of Plaintiff’s alleged disability or any other characteristic or activity protected by applicable law, and Alstom did not otherwise engage in unlawful conduct.

Insofar as Plaintiff alleges that Alstom discriminated against Plaintiff on account of a “perceived disability,” Plaintiff’s alleged claims must fail.

Plaintiff did not suffer an adverse employment action under applicable law in that Plaintiff was insubordinate and refused to cooperate with Alstom’s efforts to determine whether Plaintiff was entitled to a reasonable accommodation and whether such accommodation was available that would not impose an undue hardship on Alstom, and in that Plaintiff rejected a reasonable accommodation.

Plaintiff was not a qualified individual with a disability under applicable law and otherwise was not entitled to or qualified for the job in question with or without reasonable accommodation that did not impose an undue hardship on Alstom.

Plaintiff added substantial new content to Plaintiff’s Position in this filing and counsel for Alstom received this new content on the afternoon of August 12, 2024, the date of this filing. Alstom is not contesting Plaintiff’s right to include additional content in this filing, but Alstom has not had the opportunity to review and digest the additional information and respond, if needed.

IV. MOTIONS**A. Plaintiff's Position**

Plaintiff anticipates discovery motions as needed and anticipates filing Motion for Summary Adjudication concerning select causes of Action.

B. Defendant's Position

Alstom anticipates dispositive motions practice.

V. PLEADING AMENDMENTS**A. Plaintiff's Position**

Plaintiff plans to amend his pleadings following discussions with Defense counsel.

B. Defendant's Position

Alstom does not anticipate amending pleadings at this time.

VI. EVIDENCE PRESERVATION

The Parties have reviewed the relevant guidelines related to the discovery and preservation of electronically stored information. The Parties intend to use reasonable and appropriate best practices for preserving and producing electronic information in compliance with and as requested by the Federal Rules of Civil Procedure.

VII. DISCLOSURES

The Parties have exchanged initial disclosures.

VIII. DISCOVERY**A. Plaintiff's Position**

The Parties attended a mediation ordered by the Court on July 16, 2024. The mediation failed because Defendant did not counter Plaintiff's demand. To date, Defendant's highest offer is \$5,000. Plaintiff does not propose any modification to typical discovery avenues afforded by the Federal Rules of Civil Procedure, or that discovery be conducted in phases. Plaintiff proposes followed by an eight (8) month period to complete fact discovery and depositions, and a two (2) month period to conduct expert discovery thereafter.

1 **B. Defendant's Position**

2 Alstom does not propose any modification to typical discovery avenues afforded by the
3 Federal Rules of Civil Procedure, or that discovery be conducted in phases. Alstom is agreeable to
4 an eight (8) month period to complete fact discovery and depositions, and a two (2) month period
5 to conduct expert discovery thereafter. Defendant will not respond to Plaintiff's statements
6 regarding settlement discussions and mediation as they are inappropriate in this context.

7 **IX. CLASS ACTIONS**

8 This matter is not a case action.

9 **X. RELATED CASES**

10 The Parties are unaware of related cases.

11 **XI. RELIEF**

12 **A. Plaintiff's Position**

13 As of this present date, Plaintiff is seeking general damages, special damages,
14 statutory damages, attorneys' fees and costs of suit, and punitive damages.

15 **B. Defendant's Position**

16 Alstom seeks judgment in favor of Defendant and Alstom and that Defendant or
17 Alstom be awarded their costs of suit and attorneys' fees incurred in this action.

18 **XII. SETTLEMENT & ADR**

19 The Parties have discussed alternative dispute resolution. The parties are agreeable to
20 have the Court assign a Magistrate Judge to mediate this matter. Plaintiff does not wish to attend
21 any further ADR sessions until discovery has been conducted.

22 **XIII. OTHER REFERENCES**

23 The Parties do not believe the matter appropriate for alternative reference at this time.

24 **XIV. NARROWING OF ISSUES**

25 **A. Plaintiff's Position**

26 Plaintiff anticipates disputes regarding whether Alstom engaged in a good faith interactive
27 process. Unfortunately, Defendant still claims that Plaintiff was not disabled and refers to his health
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1 conditions as alleged disabilities despite confirmation from medical records Plaintiff provided to
2 Defendant. Thus, whether Plaintiff had qualifying disabilities under FEHA is at issue. Plaintiff
3 anticipates that Alstom will claim that Plaintiff was not able to perform the essential functions of
4 his job with or without reasonable accommodations. Plaintiff plans on rebutting this contention
5 during discovery. Plaintiff anticipates that Defendant will claim that Plaintiff's emotional distress
6 was caused by alternate stressors and that their wrongful termination of his employment did not
7 contribute to the emotional distress that he suffered. Plaintiff anticipates rebutting this argument
8 and demonstrating that there was no undue hardship on the Defendants and they should have
9 provided Plaintiff with the reasonable accommodation he requested—a finite, month long, medical
10 leave of absence.

11 **B. Defendant's Position**

12 Defendant anticipates the central issues in the case will be whether Plaintiff was disabled
13 under the law, and if so, whether there was an available accommodation that would enable Plaintiff
14 to perform the essential functions of his job without undue burden on Alstom. Further, a key issue
15 will be whether Alstom acted reasonably in its attempts to determine if Plaintiff was disabled, and
16 if so, whether an appropriate accommodation was available. Further, Defendant anticipates that
17 the veracity of Plaintiff's allegations about his condition may become an issue, depending on the
18 information obtained in discovery.

19 **XV. EXPEDITED TRIAL PROCEDURES**

20 **A. Plaintiff's Position**

21 Plaintiff does not believe the matter suited to the expedited trial procedures of
22 General Order No. 64.

23 **B. Defendant's Position**

24 Alstom does not believe the matter suited to the expedited trial procedures of
25 General Order No. 64.

XVI. SCHEDULING

A. Joint Proposed Schedule

Calendar Event	Proposed Date
Informal Pre-Mediation Discovery Cut Off	May 31, 2024
Completion of Initial ADR Session	July 31, 2024
Fact Discovery Cut Off	March 31, 2025
Expert Witness Disclosures	April 15, 2025
Expert Discovery Cut Off	May 15, 2025
Dispositive Motion Filing Cut Off	May 31, 2025*
Pretrial Conference	August 7, 2025
Trial	August 18, 2025

* Defendant proposes to change the Dispositive Motion deadline from March 31 to May 31, as Defendant views the March date an error in the parties' original filing. The March date is the same as the fact discovery cut-off and is prior to the close of expert discovery. However, Plaintiff objects to changing this date.

XVII. TRIAL

A. Plaintiff's Position

Plaintiff anticipates a 5-7 day trial.

B. Defendant's Position

Alstom anticipates no more than 5-7 days are needed for trial.

XVIII. DISCLOSURE OF NON-PARTY INTERESTED PERSONS

A. Plaintiff's Position

- Kevin Ferrer
- Alstom Transportation, Inc.
- Melody Rissell Leonard, Rissell Law APC
- William S. Myers, Eckert Seamans Cherin & Mellott, LLC

1 **B. Defendant's Position**

2 Alstom filed its Corporate Disclosure Statement and Certification of Interested Parties or
3 Persons at ECF No. 4. Pursuant to Federal Rule of Civil Procedure 7.1(a)(1) and Civil L.R. 3-15,
4 interested entities include:

- 5 • Alstom Transportation, Inc.
6 • Alstom Transport Holding US Inc.
7 • Alstom Transport Holdings B.V.
8 • Alstom Holdings SA

9 **XIX. PROFESSIONAL CONDUCT**

10 The Parties have reviewed the Guidelines for Professional Conduct for the Northern
11 District of California.

12 **XX. OTHER MATTERS**

13 The Parties are unaware of other matters relevant to just, speedy, and inexpensive
14 disposition of the matter. Should this change as proceedings continue, the Parties will update
15 Court accordingly.

16
17 Dated: August 13, 2024

18 /s/ Melody Rissell Leonard
19 Melody Rissell Leonard
 Counsel for Plaintiff

20
21 /s/ Gretchen N Panchik
22 Gretchen N. Panchik
23 Counsel for Defendant
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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions.

IT IS SO ORDERED.

Dated:

Jacqueline Scott Corley
United States District Judge